

APPELLANTS' BRIEF ON APPEAL

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Applicant(s):** Charles Tresser, et al.

**Examiner:** John M. Winter

**Serial No:** 09/734,086

**Group Art Unit:** 3621

**Filed:** December 11, 2000

**Docket:** YOR920000598US1 (13893)

**For:** SECURE ELECTRONIC  
STOCKS AND OTHER  
TITLES AND INSTRUMENTS

**Dated:** February 19, 2008

**Confirmation No.:** 3901

Commissioner for Patents  
P.O. Box 1450  
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**APPEAL BRIEF**

Sir:

Pursuant to 35 USC § 134 and 37 CFR §41.37, entry of Appellants' Appeal Brief, provided in support of Appellants' Notice of Appeal dated December 20, 2007, is respectfully requested.

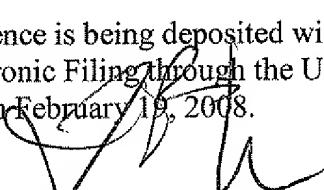
The Appeal Brief sets forth the authorities and arguments upon which Appellants rely in support of their Appeal from the final rejection of all of pending claims 1-11, 13, 15, 16 and 19-24, over the asserted prior art, where the final rejection was set forth in a final Office Action mailed September 20, 2007.

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being deposited with the United States Patent & Trademark Office via Electronic Filing through the United States Patent and Trademark Office e-business website, on February 19, 2008.

Dated: February 19, 2008

  
John F. Vodopia, Esq.

## **I. REAL PARTY IN INTEREST**

The real party in interest of the present application is International Business Machines Corporation, the assignee of the entire right, title and interest in the above-identified patent application.

## **II. RELATED APPEALS AND INTERFERENCES**

No other appeals or interferences are known which directly affect, or will be directly affected by, or have a bearing on, the disposition of the pending appeal.

## **III. STATUS OF THE CLAIMS**

The claims argued on appeal are claims 1-11, 13 and 19-24. The status of pending claims 1-11, 13, 15, 16 and 19-24, on appeal is as follows:

Claim 1-11, 13, 15, 16 and 19-24 stand rejected under 35 USC 103(a) over US Patent No. 5,351,302 to Leighton, et al. (Leighton), in view of US Patent No. 5,903,652 to Mital (Mital), and further in view of US Patent Application Publication No. 2002/0128940 to Orrin, et al. (Orrin).

Claims 12, 14, 17 and 18 have been cancelled without prejudice or disclaimer of subject matter.

## **IV. STATUS OF AMENDMENTS**

In response to the final Office Action mailed September 20, 2007 (“the final Office Action”), Appellants filed an Amendment Under 37 CFR 1.116, on November 20, 2007 (“the after final Amendment”).

An Advisory Action was mailed from the Patent Office on December 10, 2007 (“the Advisory Action”), which maintained the final rejection of all of claims 1-11, 13, 15, 16 and 19-24.

On December 20, 2007, appellants filed their Notice of Appeal.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Claims 1-11, 13, 15, 16 and 19-24 are pending in this application, where claims 1, 7 and 13 are the independent claims. Claims 2-6 and 19-24 depend on claim 1; claims 8-11 depend from claim 7; and claims 15 and 16 depend from claim 12. A copy of the finally rejected claims is attached hereto in the Claims Appendix.

Independent claims 1, 7 and 13 are presented in this Section V. with reference to support for the various independent claims features that are found in applicants' Specification, and related drawing figures. The support is provided parenthetically.

The invention of independent claim 1 as claimed sets forth a method of digitally managing the transfer of financial instruments between a third party emitter, a first party owner and a second party transferee (Summary of the Invention; page 3, lines 1-11; Fig. 2), the method comprising the steps:

a third party emitter issuing to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter (Fig. 2, Detailed Description at page 10, lines 25-32);

the owner transferring ownership of the financial instrument to the second party transferee (Fig. 2, Detailed Description at page 11, lines 1-7; (120)), including the steps of

the owner, using a public signature scheme of the owner, signing the title by appending a message to the title, said message including a public part of a signature scheme of said second party transferee (Fig. 2, Detailed Description at page 11, lines 3-24).

The invention of independent claim 7 as claimed sets forth a system for digitally managing the transfer of financial instruments between a third party emitter, a first party owner and a second party transferee (Summary of the Invention; page 3, lines 1-11; Fig. 2), comprising:

means for a third party emitter to issue to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the

emitter, and (ii) a digital signature of the emitter (Fig. 2, Detailed Description at page 10, lines 25-32); and

The invention of independent claim 13 as claimed sets forth a program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform method steps for digitally managing the transfer of financial instruments between a third party emitter, a first party owner and a second party transferee (Summary of the Invention; page 3, lines 1-11; Fig. 2), said method steps comprising:

a third party emitter issuing to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter (Fig. 2, Detailed Description at page 10, lines 25-32);

the owner transferring ownership of the financial instrument to the second party transferee (Fig. 2, Detailed Description at page 11, lines 1-7; (120)), including the steps of

the owner, using a public signature scheme of the owner, signing the title by appending a message to the title, said message including a public part of a signature scheme of said other person second party transferee (Fig. 2, Detailed Description at page 11, lines 3-24).

The patentability of the dependent claims shall stand or fall based on the patentability of the independent claims.

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1-11, 13, 15, 16 and 19-24 were finally rejected under 35 USC 103(a) over US Patent No. 5,351,302 to Leighton, in view of US Patent No. 5,903,652 to Mital, and further in view of US Patent Publication No. 2002/0128940 to Orrin, by the final Office Action (dated September 20, 2007).

## **VII. ARGUMENT**

### **A. The combination of Leighton, Mital and Orrin does not render claims 1-11, 13, 15, 16 and 19-24, unpatentable under 35 USC §102(a)**

Appellants submit that the final rejection of claims 1-11, 13, 15, 16 and 19-24 under 35 USC §103(a) over Leighton in view of Mital and Orrin is improper in view of the fact that the combination does not disclose Appellants' invention as claimed.

In the final Office Action, the rejection of claims 1-11, 13, 15, 16 and 19-24 under 35 USC 103(a) over Leighton in view of Mital and further in view of Orrin was maintained (on final).

With respect to independent claims 1, 7 and 13, the Examiner states therein that Leighton substantially discloses the limitations of the current application such as: creating digitally secure documents using cryptography, concatenation of data strings, digital signature, etc., in the Abstract, and at column 1, line 1- col. 2, line 16. The Examiner asserts that Leighton discloses creating titles for personal and real property, including a digital signature of the owner at column 1, lines 35-68; the owner transferring ownership of the financial instrument to another person, the owner, using a public signature schema of the owner, signing the title using a public signature scheme of the owner and appending to the title a public part of a signature scheme of said other person (i.e., the third party transferee), at column 2, lines 51-68.

The Examiner acknowledges that Leighton does not explicitly disclose a second party transferee and appending a message to the title including a public part of a signature scheme, a third party emitter issuing to the owner a title for a financial instrument and a message describing the title and how to contact the emitter.

The Examiner then asserts that Mital discloses a third party emitter issuing to the owner a title for a financial instrument and a message describing the title and how to contact the emitter, at col. 2, lines 22-62, col. 22, line 24-col. 23, line 20, and col. 27, lines 17-53, to prepare a secure authenticated digital document with digital signature to

be transmitted over the Internet, and that it would have been obvious to modify Leighton, and include a third-party emitter issuing to the owner a title for a financial instrument and a message describing the title and how to contact the emitter, as disclosed by Mital, to prepare a authenticated digital document for sending over the Internet.

The Examiner further asserts that Leighton discloses transferring ownership to another person, but fails to explicitly disclose a second party transferee and appending a message to the title, said message including a public part of a signature scheme. The Examiner then asserts that Orrin discloses a second party transferee (assignee), and appending a message to the title that has a public part (pars. [004], [015], [030]), to electronically represent a legally binding document showing the current ownership (assignor), transfer of the ownership to the next owner (assignee), reducing reliance on paper documents and presenting the document in electronic format, and that it would therefore have been obvious to modify the disclosure of Leighton with Mital, and to include appending a message to the title that has a public part, as disclosed by Orrin.

Appellants respectfully disagree, and urge the Board of Patent Appeals to overturn the final rejection of independent claims 1, 7 and 13, and the claims that depend therefrom.

Initially, appellants respectfully assert that there is no reason stated in the outstanding final Office Action that would have prompted the skilled artisan at the time of the invention to make such a combination, a requirement for establishing a *prima facie* case of obviousness under the law of section 103(a). While the Examiner states that the combination of Leighton, Mital or Orrin has the ability to form a legally binding digital document and messages such as time-stamp with digital signature either in or out of presence of an official such as a notary, attorney, etc., to be transmitted electronically as a non-secure communication such as via the Internet, applicants respectfully assert that this reason is attributable to inventions directed to secure transactions. That is, each of the cited references appear to have for their intended purpose to realize legally binding documents.

In the recently decided US Supreme Court case KSR Int'l Co. v Teleflex, Inc., No. 04-1350 (US; April 30, 2007), it was held that an analysis supporting a rejection under 35 USC §103(a) should be made explicit “to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. Because there is no explicit analysis contained in the final Office Action for the proposed Section 103(a) combination of Leighton with Mital, or Leighton and Mital combined with Orrin, the stated section 103(a) combination is inherently improper under Section 103(a), and should be overturned by the Board. That is, the Examiner’s reason is insufficient for establishing a *prima facie* case of obviousness under the law under the holding in KSR. But *assuming arguendo* that there is a proper reason in the prior art for combining Leighton, Mital and Orrin under section 103(a), Leighton, Mital and Orrin combined still fail to include that a second party transferee appends a message to the title that describes the title, and how to contact the third-party emitter, and includes the digital signature of the emitter and a public part of the signature scheme.

Generally, applicants independent claims 1, 7 and 13, and the claims that depend from these independent claims patentably distinguish over the Leighton, Mital and Orrin because none of the cited references show or suggest the feature, in a method of digitally managing the transfer title to financial instruments between a third party emitter, a first party owner and a second party transferee, where the third party emitter issues to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter, the owner transferring ownership of the financial instrument to the second party transferee, including the owner, using a public signature scheme of the owner, signing the title by appending a message to the title, and that the message includes a public part of a signature scheme of the second party transferee.

Significantly, the Court of Appeals for the Federal Circuit emphasizes that a strict identity test must be met in order for a reference to anticipate a claim under 35

U.S.C. 102. For instance, in Apple Computer, Inc. v. Articulate Systems, Inc., 57 USPQ2d 1057, 1061 (Fed. Cir 2000), the Court explained that: “[a]nticipation under 35 U.S.C. 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention.” “Substantial identity” or “equivalency” is not sufficient. RCA Corp. V. Applied Digital Data Sys., Inc., 221 USPQ 385 (Fed. Cir. 1984).

MPEP 2141.01 sets forth that prior art available under 35 USC §102 is available under 35 USC §103. Ex Parte Andersen, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981), asserts that 35 USC §103 includes all of the various bars to a patent as set forth in 35 USC §102. Appellants respectfully assert that neither the final Office Action nor the Advisory Action establish that the combined references include each limitation of the invention as set forth in independent claims 1, 7 and 13, and that the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

Leighton discloses a system for preventing counterfeiting or otherwise illegal use of documents, i.e., forms a legally binding digital document. In the Leighton system, a title is provided with an identifier uniquely associated with the personal or real property that is the subject of the title, and information directly or indirectly identifying the owner of the property. Applicants have examined Leighton’s Abstract, and Leighton at col. 1, line 1-col. 2, line 16, and do not find a method of digitally managing the transfer of financial instruments between a third-party emitter, a first party owner and a second party transferee.

While the Examiner asserts that Leighton at col. 1, lines 35-68, discloses that a third party emitter issues to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter, applicants do not agree. The cited text states that Leighton creates secure titles including an identifier uniquely associated with personal or real property to be identified, and information directly or indirectly identifying the legal

owner of the title. The identifier, for example, is a vehicle identification number for title to a motor vehicle, and information either directly or indirectly identifying the legal owner is concatenated into a data string that is digitally signed using a secret key of a public cryptosystem pair.

To verify title, a transaction terminal uses a corresponding public key to decrypt the data string. Leighton at col. 1, lines 35-68, however, does not disclose a third party emitter issuing to an owner a title for a financial instrument including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter.

While the Examiner further asserts that Leighton at col. 2, lines 51-68, discloses (A.) the owner transferring ownership of the financial instrument to another person, and (B.) the owner, using a public signature schema of the owner, signing the title using a public signature scheme of the owner and appending to the title a public part of a signature scheme of said other person (i.e., the third party transferee), applicants do not find the claimed elements at the cited portions of Leighton.

Applicants read the cited Leighton text as merely discussing digital signatures and public-key cryptosystems and how a digital signature can be used to bind information to a title. There is no teaching or suggestion of having an owner transfer ownership of a financial instrument to a second party transferee, including that the owner, using his or her public signature scheme, appending a message to the title, where this message includes a public part of a signature scheme of the transferee.

The Examiner further asserts that Mital discloses a third party emitter issuing to the owner a title for a financial instrument and a message describing the title and how to contact the emitter (col. 2, lines 22-62, col. 22, line 24-col. 23, line 20 and col. 27, lines 17-53) to prepare a secure authenticated digital document with digital signature to be transmitted over the Internet. The Examiner the concludes that it would have been obvious to modify Leighton and include a third-party emitter issuing to the

owner a title for a financial instrument and a message describing the title and how to contact the third-party emitter to prepare a authenticated digital document for sending over the Internet.

Applicants respectfully disagree that Mital teaches a third party emitter issuing to the owner of title for a financial instrument and a message describing the title and how to contact the emitter at col. 2, lines 23-62, col. 24, line 24-col. 23, line 20, and col. 27, lines 17-53. At col. 2, Mital refers to a computer user named Carl who wishes to signs a digital document. Carl directs his computer to create a public/private key pair, encrypts the document with his private key, and sends the signed document with the public key to Doug (Doug's computer). The cited text then sets forth the particular of a similar exchange between Eric and Frank. Nowhere does Mital disclose a third party emitter issuing to the owner of title for a financial instrument and a message describing the title and how to contact the emitter.

While the Examiner asserts that Orrin discloses a second party transferee (assignee), and appending a message to the title that has a public part (par. 004, 015, 030), and that it would therefore have been obvious to modify the Leighton as modified by Mital combination to include appending a message to title that has a public part, as disclosed by Orrin, applicants again respectfully disagree. The cited Orrin paragraphs merely recite having the owner, using his or her public signature scheme, append a message to the title, where this message includes a public part of a signature scheme of the transferee.

Applicants' independent claims include the limitation that the owner transferring ownership of the financial instrument to the second party transferee, the owner, using a public signature scheme of the owner, signing the title by appending a message to the title, said message including a public part of a signature scheme of said second party transferee.

Hence, combining Leighton with Mital and Orrin does not remedy the shortcomings of Leighton, or Leighton combined with Mital, with respect to the independent claim language. That is, combining Leighton, Mital and Orrin still would not realize a method such as that set forth in applicants' independent claims, including a third party emitter issuing to the owner a title to a financial instrument, the title including a message describing the title and how to contact the emitter, and a digital signature of the emitter, the owner transferring ownership of the financial instrument to the second party transferee, including the owner, using a public signature scheme of the owner, signing the title by appending a message to the title, said message including a public part of a signature scheme of said second party transferee, a limitation in each of claims 1, 7 and 13.

Due to the above-discussed differences between claims 1, 7 and 13 and the Leighton, et al., Mital and Orrin combination, and because of the advantages associated with these differences, claims 1, 7 and 13 patentably distinguish over the prior art and are allowable. Claims 2-6 and 19-24, are dependent from claim 1 and are allowable therewith; claims 8-11 are dependent from claim 7 and allowable therewith; and claims 15, 16 depend from claim 13 and are allowable therewith.

The Board of Patent Appeals and Interferences, therefore, is respectfully asked to overturn the final rejection of claims 1-11, 13, 15, 16 and 19-24 under 35 U.S.C. §103 (a) by the Leighton, Mital and Orrin combination, and to allow the claims.

The other references of record have been reviewed, and these other references, whether considered individually or in combination, also do not disclose or suggest this feature of the present invention.

#### **B.) Conclusion**

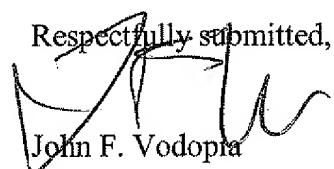
Appellants, therefore, respectfully assert that independent claims 1, 7 and 13 are not anticipated by the asserted section 103(a) combination of Leighton, Mital and Orrin for at least the reasons set forth, and urge the Board of Patent Appeals of overturn

the final rejection of claims 1, 7 and 13 under Section 103(a) in view of Leighton, Mital and Orrin. Claims 2-6, and 19-24 depend from claim 1, and are patentable therewith.

Claims 8-11 depend from claim 7, and are patentable therewith, and claims 15, 16 depend from claim 13 and are patentable therewith.

Appellants, therefore, urge the Board to overturn the rejections of claims 1-11, 13, 15, 16 and 19-24 under Section 103(a) in view of Leighton, Mital and Orrin, and allow these pending claims.

Respectfully submitted,



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Enclosures: Appendices VIII, IX and X

### **VIII. CLAIMS APPENDIX**

1. (Previously Presented) A method of digitally managing the transfer of financial instruments between a third party emitter, a first party owner and a second party transferee, the method comprising the steps:

    a third party emitter issuing to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter;

    the owner transferring ownership of the financial instrument to the second party transferee, including the steps of

    the owner, using a public signature scheme of the owner, signing the title by appending a message to the title, said message including a public part of a signature scheme of said second party transferee.

2. (Previously Presented) A method according to Claim 1, wherein the transferring step includes the step of the emitter appending to the title a number indicating the number of successive owners of the title.

3. (Previously Presented) A method according to Claim 1, further comprising the step of the owner keeping the public part of the signature of the second party transferee and making said public part available to potential subsequent buyers.

4. (Previously Presented) A method according to Claim 1, further comprising the step of sending the title, with the signature of the owner made using the public signature scheme of the owner, to said second party transferee.

5. (Original) A method according to Claim 1, wherein the creating step includes the step of using a secure cryptographic generator to create the title.

6. (Original) A method according to Claim 5, wherein the secure cryptographic generator is an IBM 4758.

7. (Previously Presented) A system for digitally managing the transfer of financial instruments between a third party emitter, a first party owner and a second party transferee, comprising:

means for a third party emitter to issue to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter; and

means for the owner to transfer ownership of the financial instrument to the second party transferee, including means for the owner to sign the title, using a public signature scheme of the owner, by appending a message to the title, said message including a public part of a signature scheme of said second party transferee.

8. (Previously Presented) A system according to Claim 7, wherein the means to transfer ownership includes means for the emitter to append to the title a number indicating the number of successive owners of the title.

9. (Previously Presented) A system according to Claim 7, further comprising means for the owner to keep the public part of the signature of the second party transferee, and to make said public part available to potential subsequent buyers.

10. (Previously Presented) A system according to Claim 7, further comprising means for sending the title, with the signature of the owner made using the public signature scheme of the owner, to said second party transferee.

11. (Original) A system according to Claim 7, wherein the means for creating includes a secure cryptographic generator.

12. (Cancelled).

13. (Previously Presented) A program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform

method steps for digitally managing the transfer of financial instruments between a third party emitter, a first party owner and a second party transferee, said method steps comprising:

    a third party emitter issuing to the owner a title for a financial instrument, the title including (i) a message describing the title and how to contact the emitter, and (ii) a digital signature of the emitter;

    the owner transferring ownership of the financial instrument to the second party transferee, including the steps of

        the owner, using a public signature scheme of the owner, signing the title by appending a message to the title, said message including a public part of a signature scheme of said other person second party transferee.

14. (Cancelled)

15. (Previously Presented) A program storage device according to Claim 13, wherein said method steps further comprise the steps of the owner keeping the public part of the signature of the second party transferee, and making said public part available to potential subsequent buyers.

16. (Previously Presented) A program storage device according to Claim 13, wherein said method steps further comprise the step of sending the title, with the signature of the owner made using the public signature scheme of the owner, to said second party transferee.

17. (Cancelled)

18. (Cancelled)

19. (Previously Presented) A method according to Claim 1, wherein: said signature scheme includes a private key and a public key; and

the step of the owner signing the title includes the step of the owner using the public key of the signature scheme to encrypt the owner's signature in the title.

20. (Previously Presented) A method according to Claim 19, wherein the transferring step includes the steps of:

appending to the title a number indicating the number of successive owners of the title; and

said second party transferee using said private key of the signature scheme to decrypt the owner's signature and said number.

21. (Previously Presented) A method according to Claim 1, wherein:

the digital signature of the emitter includes a public key of a public/private key pair of the emitter;

the issuing step includes the step of making a serial number and a description of the title publicly available as soon as the title is created;

the transferring step includes the steps of, after the public part of the signature scheme of said second party transferee is appended to the title,

- i) communicating to the emitter said public part of the signature scheme of said second party transferee,
- ii) sending to the emitter a number N indicating the number of successive owners of the title,
- iii) the emitter keeping said public part of the signature scheme of said second party transferee and making said public part of the signature scheme of said second party transferee available to potential future buyers,
- iv) the emitter re-signing the title, and sending the re-signed title to said second party transferee, and
- v) the emitter posting that there is a new owner of the title and describing the public part of the signature scheme of said second party transferee; and a fourth party potential buyer asking the emitter to freeze the possibility of selling the title to anyone other than said fourth party for a period of time.

22. (Previously Presented) A method according to Claim 21, wherein:  
the emitter is comprised of a set S of geographically distributed servers; and the issuing step includes the steps of

- i) using a signing key to make the digital signature of the emitter, said signing key including a plurality of partial keys,
- ii) sharing the signing key between the set of servers, wherein each of the servers has one of said partial keys,
- iii) at least some of the servers signing the title using a distributed protocol and using the partial keys of the servers,
- iv) considering the title signed by the emitter only if a defined subset of the S servers sign the title,
- v) using specified hardware to issue the title, and
- vi) using the specified hardware to print lists of title numbers and descriptions of the public part of the signature scheme used by the emitter.

23. (Previously Presented) A method according to Claim 1, wherein the transferring step includes the step of, after said message is appended to the title:  
communicating to the emitter said public part of the signature scheme of said second party transferee;

the emitter keeping said public part of the signature scheme of said second party transferee and making said public part of the signature scheme of said second party transferee available to potential future buyers; and

the emitter re-signing the title, and sending the re-signed title to said second party transferee.

24. (Previously Presented) A method according to Claim 1, comprising the further step of a fourth party potential buyer using the emitter to prevent the sale of the title to anyone other than said fourth party for a defined period of time.

## **IX. EVIDENCE APPENDIX**

None. There is no evidence presented.

**X. RELATED PROCEEDINGS APPENDIX**

None. There are no related proceedings.